



Arkansas Association of Defense Counsel

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Under Arkansas's Equine Activity Statute, does an owner of a horse enjoy immunity when the horse causes property damage to a vehicle at a rodeo?

The owner of a horse probably does not enjoy immunity under Arkansas's equine activity statute when a horse causes property damage to a vehicle at a rodeo. If the owner of the horse is not the equine activity sponsor or employee, then the equine activity statute does not apply. Even if the horse's owner is an equine activity sponsor or employee, the insured is most likely not considered a participant if the insured was simply a spectator or not actively involved with the equine. Therefore, the equine activity statute would not apply. Finally, even if the horse's owner is an equine activity sponsor or employee and the insured was considered a participant, it is tenuous to assert that immunity extends to property damage based on the statute's language and construction. Arkansas's equine activity statute, in comparison with other states' statutes, has narrow applicability based on the types of damages covered. Arkansas's statute only covers an injury to or death of a participant, and is silent on property damage. Therefore, immunity does not extend to property damage.

DISCUSSION

The vast majority of states have enacted equine activity statutes. The purpose of equine activity statutes is "to provide qualified immunity for equine professionals and sponsors of equine activities." *The New Equine Liability Statutes*, 62 Tenn. L. Rev. 997. Arkansas enacted its equine activity statute in 1995, which is codified at Ark. Code Ann. § 16-120-201 *et seq.* In part, the statute states as follows:

[A]n equine activity sponsor, an employee of an equine activity sponsor, a livestock sponsor, a livestock owner, a livestock facility, or a livestock auction market is not liable for an injury to or the death of a participant resulting from the inherent risks of an equine activity or a livestock activity. Ark. Code Ann. § 16-120-202(a)(1).

Individuals Eligible for Limited Liability

The category of individuals eligible to enjoy immunity this statute affords is narrow. Immunity, within the context of equines, only applies to "an equine activity sponsor [and] an employee of an equine activity sponsor." Ark. Code Ann. 16-120-202(a)(1). Equine activities include a variety of activities that involve horses, including rodeos. Ark. Code Ann. 16-120-201(2)(A). A sponsor of equine activities includes persons and legal entities, such as an organization, which "sponsors, organizes, or provides facilities for an equine activity." Ark. Code Ann. 16-120-201(3). The statute is silent about what constitutes an employee at an equine activity as well as whether the equine's owner engaged in an equine activity enjoys limited liability. On the other hand, livestock owners engaged in livestock activities enjoy immunity. Ark. Code Ann. 16-120-202(a)(1). However, equine activities vastly differ from livestock activities. Equines are not considered livestock, because the statute defines livestock as "swine, bovine, sheep, and goats." Ark. Code Ann. 16-120-201(4).

Here, the insured was at a rodeo, which is an equine activity, not a livestock activity, under Arkansas law. Individuals at this rodeo who may be eligible to enjoy limited liability are limited to the rodeo's sponsor, organizer, and facility provider as well as the rodeo's employees. If the owner of the horse does not fall into any of the aforementioned categories, then the horse's owner potentially could be liable. Additionally, if the incident involved a non-paid rodeo worker, volunteer, or other individual that does not meet the aforementioned categories, then those individuals potentially could be liable.

Defining Equine Activity Participants

Arkansas's equine activity statute provides immunity to certain individuals if a participant is injured. A participant includes professional and amateur individuals "who engage[d] in an equine activity." Ark. Code Ann. 16-120-201(9). The scope of who is considered a participant varies

from state to state. *The New Equine Liability Statutes*, 62 Tenn. L. Rev. 997. Arkansas provides no definition for “engage[d] in an equine activity,” nor is there case law on the issue to provide insight. States implement both broad and narrow views of engagement in such activity. *The New Equine Liability Statutes*, 62 Tenn. L. Rev. 997. Generally spectators and others not directly involved with the equine are not considered participants. *Id.*

The vast majority of states, including almost every state in the Eighth Circuit and all of Arkansas’s neighboring states, generally define an individual “engage[d] in an equine activity” as one who is actively involved with the equine. See, e.g., La. Rev. Stat. Ann. § 9:2795.1; Minn. Stat. Ann. § 604A.12; Miss. Code Ann. § 95-11-3; Mo. Rev. Stat. § 537.325; Neb. Rev. Stat. Ann § 25-21250; N.D. Cent. Code § 53-10-01; Okla. Stat. tit. 76, § 50.2; S.D. Codified Laws § 42-11-1; Tenn. Code Ann. § 44-20-102; Tex. Civ. Prac. & Rem. Code § 87.001; cf. Iowa Code Ann. § 673.2. The following is a common definition of “engage[d] in an equine activity:”

[R]iding, training, assisting in medical treatment of, driving or being a passenger upon an equine, whether mounted or unmounted, or any person assisting a participant or any person involved in show management. The term “engages in an equine activity” does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area.
Mo. Rev. Stat. § 537.325.

Here, the insured is most likely not considered a participant. Under Arkansas law, immunity is only possible if a participant is injured or killed. A participant is typically defined as an individual who is actively involved with the equine in some capacity. Generally, a spectator and others not actively involved with the horses are not considered participants. If the insured was a spectator at the rodeo, then it is very likely that the insured will not be considered a participant. Likewise, if the insured parked at the rodeo, but was not a spectator at the event, then the insured is not considered a participant. However, if the insured was actively involved with the equine, such as conducting any of the aforementioned activity listed in Missouri’s definition of a participant, then the insured probably would be considered a participant.

Scope of Damages Covered

Arkansas’s equine activity statute has narrow applicability based on the types of damages the statute covers. Arkansas’s equine activity statute provides immunity in the event of “an injury to or the death of a participant.” Ark. Code Ann. § 16-120-202(a)(1). Arkansas’s statute does not define what constitutes an injury to a participant, and whether an injury to a participant includes damage to a participant’s property. The majority of other states that have equine activity statutes implicitly differentiate between an injury to a participant and damage or loss a participant suffers. See, e.g., Ala. Code § 6-5-337; Del.Code Ann. tit. 10, § 8140; Ga. Code Ann. § 4-12-3; Haw. Rev. Stat. Ann. § 663B-2; Fla. Stat. Ann. § 773.02; La. Rev. Stat. Ann. § 9:2795.1; Mass. Ann. Laws ch. 128, § 2D; Mo. Rev. Stat. § 537.325; Miss. Code Ann. § 95-11-3; N.C. Gen. Stat. § 99E-1; N.H. Rev. Stat. Ann. § 508:19; 4 R.I. Gen. Laws § 21-2; S.C. Code Ann. § 47-9-720; Tenn. Code Ann. § 44-20-104. Other states explicitly provide immunity if a participant’s property is damaged. See, e.g., 745 Ill. Comp. Stat. Ann. 47/10; Mich. Comp. Laws Serv. § 691.1662; Tex. Civ. Prac. & Rem. Code § 87.003. While other states, such as Arkansas, are silent on whether immunity extends to a participant’s property damage. See, e.g., Ark. Code Ann. § 16-120-202(a)(1); S.D. Codified Laws § 42-11-2; Va. Code Ann. § 3.2-6200.

Given that Arkansas’s equine activity statute is silent regarding whether limited liability extends to a participant’s property damage, this statute does not limit liability in this capacity. The majority of other states who have equine activity statutes either explicitly or implicitly state that a limited liability extends to a participant’s property damage. That wording is not included in Arkansas’s equine activity statute. Arkansas’s equine activity statute is narrower than most other states, and it only limits liability in the event of “an injury to or the death of a participant.” Based on the statutory language, “an injury to...a participant” is stated as an conjunctive with “the death of a participant.” It is clear based on the statutory language and construction that the statute only applies to bodily injuries to a participant.

CONCLUSION

Arkansas’s equine activity statute limits the liability of certain individuals involved in equine activities if a participant is injured or killed. The category of individuals eligible for immunity does not include

equine owners unless the owner is also the equine activity sponsor or employee. These individuals are immune only if a participant is injured or killed. Generally, spectators and other individuals not actively involved with the equine, are not considered participants. Finally, Arkansas law is silent on whether immunity extends to property damage.

The owner of a horse probably does not enjoy immunity under Arkansas's equine activity statute when a horse causes property damage to a vehicle at a rodeo. If the owner of the horse is not the equine activity sponsor or employee, then the equine activity statute does not apply. Even if the horse's owner is an equine activity sponsor or employee, the insured is most likely not considered a participant if the insured was simply a spectator or not actively involved with the equine. Therefore, the equine activity statute would not apply. Finally, even if the horse's owner is an equine activity sponsor or employee and the insured was considered a participant, it is tenuous to assert that immunity extends to property damage based on the statute's language and construction. Arkansas's equine activity statute, in comparison with other states' statutes, has narrow applicability based on the types of damages covered. Arkansas's statute only covers an injury to or death of a participant, and is silent on property damage. Therefore, immunity does not extend to property damage.

The AADC wishes to thank Stefanie Blahut for writing this article.



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